

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM INDELICATO,

Plaintiff,

v.

LIBERTY TRANSPORTATION, INC.,

Defendant.

18-CV-253
DECISION AND ORDER

On February 16, 2018, the plaintiff commenced this action, Docket Item 1, and on May 23, 2018, the defendant moved to dismiss, Docket Item 8. On May 24, 2018, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 11. On June 15, 2018, the plaintiff responded to the defendant's motion, Docket Item 13. On August 16, 2018, Judge Scott issued a Report and Recommendation ("R&R") finding that the defendant's motion should be granted and that the case should be dismissed. Docket Item 19. The parties did not object to the R&R,¹ and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ.

¹ The plaintiff filed a "response" in which he "agree[ed] that [his] lawsuit [should] be dismissed, without prejudice and with leave to re-file in a District Court of appropriate personal jurisdiction." Docket Item 22.

P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's R&R. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the defendant's motion.

For the reasons stated above and in the R&R, the defendants' motion to dismiss, Docket Item 8, is GRANTED; the complaint, Docket Item 1, is dismissed without prejudice; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: April 6, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE